REMARKS

Claims 120-193 are pending in the application and claims 186-191 stand allowed. By the amendment submitted herewith claims 120, 127, 128, 129, 131, 132, 135, 140, 142, 143, 153, 158, 160, 161, 169, 174, 176, 177, 192 and 193 are amended to particularly point out and distinctly claim certain embodiments of applicants' invention, and claims 130, 141, 159 and 175 are canceled, without acquiescence in any rejection and without prejudice to the prosecution of any deleted subject matter in this or any related continuation, continuation-in-part or divisional application. Support for the amendments can be found in the application as originally filed, for example, in the specification at page 5, line 28 through page 6, line 9; page 10, lines 4-9; page 14, lines 15-20; page 16, lines 13-18; page 19, lines 6-11; page 26, lines 12-21; page 31, lines 22-25; page 32, line 12 through page 34, line 8, including page 32, lines 16-28 and page 33, lines 1-4; page 36, lines 12-24, and elsewhere; and in the original claims. No new matter is introduced by the present amendment.

NON-STATUTORY OBVIOUSNESS-TYPE DOUBLE PATENTING

A. The PTO maintains the rejection of claims 120-185 and 192 for non-statutory obviousness-type double patenting over claims 120, 122-128 and 130-133 of copending application number 11/355,518 (Taylor et al.) for the reasons asserted "in the previous Office Action." The immediate "previous Office Action" dated April 15, 2009, similarly asserts that the non-statutory obviousness-type double patenting rejection is maintained "for the reasons stated in the previous Office Action." In the referred-to "previous Office Action" dated August 5, 2008, the PTO concedes (at page 10) that this "is a provisional obviousness-type double patenting rejection" (emphasis in original).

Accordingly, without acquiescence in the rejection and for reasons also previously made of record by the applicants, applicants traverse this rejection with the understanding that the present provisional double patenting rejection may be maintained in the present application and in application 11/355,518:

> as long as there are conflicting claims in more than one application unless that 'provisional' double patenting rejection is the ***only*** rejection remaining in at least one of the applications. M.P.E.P. § 804(I)(B). (emphasis added)

It is therefore submitted that where there presently remain other outstanding issues in both applications beyond the provisional obviousness-type double patenting rejections, appropriate action will be taken by applicants at such time as the provisional double patenting rejection is the *only* remaining issue in at least one of the applications, per M.P.E.P. § 804(I)(B). For reasons given herein, applicants believe that the present amendments resolve all issues raised by the PTO in the instant application, other than the instant provisional obviousness-type double patenting rejection over application number 11/355,518. Applicants await an indication by the PTO that the provisional double patenting over 11/355,518 is the *only* remaining rejection in the present application, so that the prosecution of both applications can be advanced as appropriate.

B. The PTO maintains the rejection of claims 120-185 and 192 for non-statutory obviousness-type double patenting over claims 88-112 of copending application number 10/568,654 (Murphy et al.) for the reasons asserted in the previous Office Action.

Applicants respectfully traverse these grounds for rejection, including for reasons previously made of record. Nevertheless, without acquiescence in any rejection and solely for purposes of advancing the prosecution of the present application, applicants submit herewith a Terminal Disclaimer (TD) with respect to copending application number 10/568,654. Accordingly, applicants respectfully request withdrawal of this obviousness-type double patenting rejection.

REJECTION UNDER 35 U.S.C. §112, SECOND PARAGRAPH

The PTO rejects claims 120-185, 192 and 193 under 35 U.S.C. §112, second paragraph, for alleged indefiniteness. Specifically, the PTO alleges that it is unclear how the linking moiety and the antioxidant moiety are attached in the claimed antioxidant compound.

Applicants respectfully traverse these grounds for rejection. As a first matter, and in view of the cancellation herewith of claims 130, 141, 159 and 175 which renders moot the rejections of those claims, applicants request reconsideration of the rejection with respect to claims 131-134, 142-150, 152, 160-168, and 176-185. Even prior to the present amendments to the claims, proper construction of all of these claims includes recitation of the general structure of formula I, which includes a clear structural definition of the linking moiety and the antioxidant

moiety. As such, it is submitted that contrary to the allegations found in the Office Action, at least in claims 131-134, 142-150, 152, 160-168, and 176-185, there is no ambiguity with regard to how the linking moiety and the antioxidant moiety are attached in the recited antioxidant compound. For reasons given below, by the present amendment there is no ambiguity in *any* currently pending claim with regard to how the linking moiety and the antioxidant moiety are attached in the recited antioxidant compound.

Applicants submit that, as disclosed in the specification and recited by all of the instant claims *as presently amended*, it is clear and unambiguous how the linking moiety and the antioxidant moiety are attached. The instant embodiments are directed in pertinent part to a chemically stable antioxidant compound of the general formula I as presented in the Currently Amended claims, comprising a lipophilic cationic moiety covalently linked by a linking moiety to an antioxidant moiety and an anionic complement for said cationic moiety, and having the recited properties.

It is submitted that throughout the specification can be found abundant disclosure describing the recited lipophilic cationic moiety, linking moiety, antioxidant moiety and anionic complement, including the structural relationships by which the linking moiety and the antioxidant moiety are covalently attached, for example, as shown in formula I. For instance, at page 31, line 22 through page 33, line 7 generally, including, *e.g.*, at page 31, lines 22-25, page 32, lines 12-14, and page 33, lines 1-4, covalent coupling by the linking moiety of the lipophilic cation to the antioxidant moiety is expressly disclosed. See also, *e.g.,* specification at page 5, line 19 through page 6, line 9; page 10, lines 4-9; page 14, lines 15-20; page 16, lines 13-18; page 19, lines 6-11; page 26, lines 12-21; page 32, line 12 through page 34, line 8, including page 32, lines 16-28 and page 33, lines 1-4; page 36, lines 12-24, and elsewhere, including in the Examples.

By the present amendments in view of the instant specification, the claims recite a general structure (formula I) from which it is clear how the expressly recited components are attached to one another. It is therefore submitted that given the present application, the skilled person can readily recognize covalent bonds in a chemical structure, and would also readily understand from the specification disclosure what is the lipophilic cationic moiety (*e.g.*,

triphenylphosphonium), the antioxidant moiety (*e.g.*, quinol or quinone as shown in formula I and described at page 26, lines 12-21 and elsewhere, or other the other recited antioxidant moieties as described at, *e.g.,* page 33, line 8 through page 34, line 8; page 36, lines 12-24), and the linking moiety (*e.g.*, page 32, line 12 through page 34, line 8). In the general structure of formula I it is unambiguous, when the claims as presently amended are properly read in light of the specification, that the linking moiety covalently attaches the lipophilic cationic moiety to the antioxidant moiety. It is also clear from the present specification, and according to conventional practices in the chemical arts, what is intended by terminology and structural notation that refer to a salt form obtained by the non-covalent association of a cation and its anionic complement (*e.g.*, page 4, lines 9-13; page 4, line 27 through page 5, line 2; page 35, lines 3-18). Hence, in the general structure of formula I there is no ambiguity regarding the relationship of the lipophilic cation and the anionic complement as ionically associated components.

Accordingly and in view of the foregoing, applicants submit that with the present amendments the claims particularly point out and distinctly claim the encompassed subject matter in a manner that complies with all requirements of 35 U.S.C. §112, second paragraph. Reconsideration and withdrawal of the indefiniteness rejection are therefore respectfully requested.

REJECTION UNDER 35 U.S.C. §101

The PTO provisionally rejects claim 134 under 35 U.S.C. §101 for statutory double patenting over claim 134 of copending application number 11/355,518.

Applicants thank the Examiner for bringing this provisional double patenting issue to applicants' attention. Without acquiescence in any rejection, and acknowledging that the provisional double patenting rejection is appropriate where the conflicting claims have not been patented, applicants reserve the right, upon receiving an indication of the allowability of the claims in the instant application, to amend the copending application number 11/355,518 as appropriate to remove the potential for an actual double patenting rejection in application number 11/355,518.

The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090.

All of the claims remaining in the application are now clearly allowable. Favorable consideration and a Notice of Allowance are earnestly solicited.

Respectfully submitted,

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